P.R. No. 1433 Presented by Shri Vaibhav Tiwari dated 13/05/05

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH **SINGLE BENCH**

CIVIL REVISION NO. 72 /2005

APPLICANT : Ramkushal Dubey, Aged about 79 years, S/o. Ramlal Dubey, R/o. A-6, Nehru Nagar, Bilaspur, P.S. Civil Lines, Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

VERSUS

RESPONDENT : Devlal Mishra, Aged about 31 years, S/o. Gajanand Mishra (Mahapatra), R/o. Village Saida, P.O. Saida, P.S. Chakarbhata, Tahsil Takhatpur, Distt. Bilaspur (C.G.)

REVISION UNDER SECTION 115 OF CIVIL PROCEDURE CODE

(3)

(20)

HIGH COURT OF CHHATTISGARH : BILASPUR

Civil Revision No. 72 of 2005

Applicant/ Plaintiff	:	Ramkushal Dubey
		Vs.
Respondent/ Defendant	:	Devlal Mishra

Applicant/Plaintiff by Shri Manoj Paranjpe, Advocate.

ORDER
(Passed on 13/12/05)

Dhirendra Mishra, J

This is the applicant's civil revision against the impugned judgment and decree dated 03.02.2005 passed by learned IXth Additional District Judge (FTC), Bilaspur (C.G.) in Civil Appeal No. 1-B/2004 and by which the appeal preferred by the applicant against the judgment and decree dated 16.08.2003 passed in Civil Suit No. 24-B/2002 by the learned Civil Judge, Class-II, Bilaspur, has been dismissed. (Parties shall hereinafter be referred to as per their description before the trial Court.)

2. The facts necessary for adjudication of this revision are that the plaintiff filed a civil suit for recovery of damages on the averment that the defendant filed a criminal complaint under Section 500 of the I.P.C. against the plaintiff and in the said proceedings, the defendant moved an application under Sections 191 and 193 of the IPC making false defamatory allegations that the plaintiff in conspiracy with the Regional Transport Officer, Bilaspur has malafidely filed fabricated certificate knowing fully well that the same is false. However, the above application was rejected by the learned Judicial Magistrate vide order dated 09.12.1998 considering the said certificate to be genuine and the plaintiff was acquitted by the Court vide judgment dated 13.01.1999.

3. The prosecution was launched without and reasonable and probable cause by the defendant. According to the plaintiff the prosecution was actuated by

(21)

malice and because of the above prosecution the reputation of the plaintiff has suffered in the eyes of public in general and eyes of the family members in particular and accordingly, damages to the tune of Rs.15,000/- was claimed.

4. The defendant denied the allegations of the plaint and submitted that the news published against the plaintiff at his instance was true and accurate. However, the plaintiff got published an imaginary and false story in the newspaper against him. The defendant denied that he launched the prosecution malafidely with a view to defame the plaintiff. He reiterated that the plaintiff filed false certificates in collusion with the R.T.O.,Bilaspur. He further denied that the plaintiff was ever defamed and submitted that the plaintiff is not entitled for any damages as claimed. The objections regarding maintainability of the suit on the ground of limitation was also raised.

5. On the basis of the pleadings of the parties and material available on record, issues were framed by the learned trial Court and it has been held that the defendant did not initiate proceedings under Sections 500, 191 and 193 of the IPC with an intention to defame the plaintiff and the plaintiff was not defamed and as a result of the above findings, the suit was dismissed.

6. The plaintiff preferred an appeal against the above judgment, however, the learned lower appellate Court by the impugned judgment and decree dismissed the appeal with a finding that in the facts and circumstances of the case and in view of the admitted fact the defendant initiated prosecution against the plaintiff on the basis of publication of an article in the newspaper by the plaintiff against him and the same cannot be termed as malafide. It was also held that the rejection of the application of defendant filed under Sections 191 and 193 of the IPC by which he had challenged the document filed by the plaintiff in the proceedings by calling it false and fabricated, alone does not constitute defamation. The appellate Court has further recorded a finding that the plaintiff has neither pleaded in his plaint nor has stated in his statement that the defendant had launched the criminal complaint malafidely and that the plaintiff has not filed even the judgment of the criminal Court by which he was acquitted. Thus on the basis aforesaid

findings, the lower appellate Court holding that the defendant had launched criminal complaint with reasonable and probable cause and not malafidely and the plaintiff has failed to prove that because of the above prosecution, he was defamed, dismissed the appeal.

7. Learned counsel for the applicant/plaintiff submits that both the Courts below have committed illegality in placing the onus of proving the absence of reasonable and probable cause for launching prosecution on the plaintiff. Learned counsel for the applicant argues that once the plaintiff establishes by evidence that he was prosecuted by the defendant which resulted in his acquittal, then the burden shifts upon the defendant to prove that he prosecuted the plaintiff for reasonable and probable cause and he was not actuated by malice. In the instant case, the plaintiff launched prosecution against the defendant under Section 500 of the IPC as the defendant had published a defamatory article in the newspaper against him, which resulted in his acquittal and only after such publication, the plaintiff got an article published on 29.01.1994 to clarify the truth. It is further argued that as the defendant launched the prosecution with full knowledge that no offence was committed by the plaintiff and he had no reasonable and probable cause to launch such prosecution, the plaintiff was acquitted by the competent Court in the above private complaint.

8. Learned counsel for the applicant places his reliance on the judgment of the M.P. High Court reported in **1997 (2) M.P.L.J. 110** in the matter of **Yeshwantrao Rangani Kalar Vs. Nandram Govind Kalar** and submits that where the complainant knowing fully well that no offence was committed by the plaintiff and despite that a false report is made to secure prosecution or a private complaint is made on the same allegations and the proceedings result in acquittal of the plaintiff, then a presumption is to be drawn that the prosecution was malicious.

9. However, further relying upon the judgment of the M.P. High Court delivered in the matter of **Rishabhkumar Mohanlal Seth Vs. K.C.Sharma and another** reported in **1961 M.P.L.J. 436** learned counsel for the applicant submits that where the prosecution is without reasonable and probable cause, then prosecutor would be liable for damages.

10. I have heard learned counsel for the applicant/plaintiff.

11. In the matter of Yeshwantrao Rangani Kalar (supra) the prosecution was launched by the defendant on the allegation that he was abused in a public place and was threatened an injury and when the police did not take cognizance on his report, he lodged a private complaint under Section 294 and 506-I of the IPC. However, the plaintiff of that case was honourably acquitted and the trial Court recorded evidence and after hearing the parties, dismissed the suit.

12. Similarly, in the mater of Rishabhkumar Mohanlal Seth (supra) a complaint was filed against the plaintiff on the charge of theft of municipal road roller at the instance of the defendant who was Municipal President, on a report made to him not of theft but that article in question was untraceable and without any enquiry the defendant entertained a belief that it was stolen by the plaintiff and directed that the complaint be filed, which was ultimately dismissed. In the facts and circumstances of that case, it was held that the question of reasonable and probable cause for prosecution depends upon the facts as known to the prosecutor who initiated the prosecution and when such facts have been ascertained and the same did not afford reasonable and probable cause for prosecuting the accused, then absence of reasonable and probable cause may be inferred.

13. However, in the instant case the prosecution was initiated by the defendant on the basis of news item published at the instance of the plaintiff which described the defendant as a criminal, therefore the prosecution launched by the defendant cannot be termed to be malicious. It is also pertinent to mention here that the plaintiff neither pleaded in the complaint nor stated in his statement on oath that the defendant launched the prosecution malafidely without any just and proper cause. It is a settled principal of law that onus of proving absence of reasonable and probable cause is on the plaintiff. The plaintiff has not even cared to file the certified copy of the order of his acquittal during trial as he was extended benefit of doubt by the criminal Court.

(24)

14. Both the Courts below have recorded a concurrent findings of facts that the defendant did not prosecute the plaintiff maliciously and without just and proper cause, the Courts below have also held that the plaintiff had failed to prove any damages to his reputation because of the above prosecution and the above findings of facts have been recorded on the basis of analysis of evidence available on record.

15. Thus on the basis of aforesaid discussions and material available on record, I do not find any illegality or infirmity in the impugned judgment and decree which call for any interference in revisional jurisdiction under Section 115 of the C.P.C. and accordingly the revision is dismissed at the motion stage itself.

Sd/-
Dhirendra Mishra
Judge

KHAN